

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

9

Northern District of California

10

Oakland Division

11

WELLS FARGO BANK,

No. C 11-01932 LB

12

Plaintiff,

**ORDER GRANTING MOTION TO
REMAND**

13

EDMOND J. LAPEEN, *et al.*,

[ECF Nos. 4 and 5]

14

Defendants.

15

/

16

I. INTRODUCTION

17

18

19

20

21

22

23

24

25

26

27

28

Plaintiff Wells Fargo Bank (“Wells Fargo”) brings this motion to remand its unlawful detainer action against pro se Defendants Edmond J. Lapeen and Raymond Branchflower (collectively, “Defendants”). Notice of Removal, ECF No. 4 (re-noticed at ECF No. 5).¹ Defendants removed the action to federal court based on its assertion that the federal Protecting Tenants at Foreclosure Act (“PTFA”) preempts California state law with regards to evicting bona fide tenants of foreclosed landlords. *Id.* at 2. The court grants Wells Fargo’s motion because the unlawful detainer action presents only state claims on its face and the PTFA only provides tenants with federal defenses to eviction but does not create a federal ejectment claim or any private right of action.

II. FACTS

On or about January 19, 2011, Wells Fargo acquired title in the subject property by a Trustee’s

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 Deed Upon Sale following foreclosure proceedings against Lapeen. Complaint, ECF No. 1 at 8-9.
 2 Wells Fargo claims that the foreclosure complied with section 2924 of the California Civil Code. *Id.*
 3 On March 23, 2011, Wells Fargo served a written notice to vacate on Lapeen, which stated, “IF
 4 YOU ARE A ‘BONA FIDE TENANT’ under the Protecting Tenants at Foreclosure Act of 2009,
 5 you may have the option to begin paying rent to the new landlord and to remain as a tenant until
 6 ninety (90) days after service of this Notice, or until the end of a valid lease term, whichever is
 7 later.” *Id.* at 9, 12. On March 29, 2011, Wells Fargo filed the unlawful detainer action in California
 8 state court against Lapeen, the former owner of the premises. *Id.* at 8. Branchflower, the former
 9 tenant, intervened in the state action. Notice of Removal, ECF No. 1 at 1. On April 21, 2011,
 10 Defendants removed to the federal court, based on alleged federal jurisdiction. *Id.*

11 **III. LEGAL STANDARDS**

12 A defendant in a state court may remove an action to federal court so long as the action could
 13 have originally asserted federal-question jurisdiction.² 28 U.S.C. 1441(b). The defendant has the
 14 burden of proving the basis for the federal court’s jurisdiction. *Shizuko Nishimoto v. Federman-*
Bachrach & Assocs., 903 F.2d 709, 712 (9th Cir. 1990). Removal jurisdiction statutes are strictly
 15 construed against removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941); *Takeda*
 16 *v. Northwestern Nat'l. Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir.1985).

17 The “well-pleaded complaint” rule requires a federal question to be presented on the face of the
 18 plaintiff’s complaint at the time of removal for federal-question jurisdiction to exist. *Duncan v.*
Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). A plaintiff may “by eschewing claims based on federal
 19 law, choose to have the cause be heard in state court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386,
 20 399 (1987). And an anticipated federal defense is not sufficient to confer jurisdiction. *Franchise*
 21 *Tax Bd. of California v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983). But a
 22 plaintiff may not defeat removal by omitting necessary federal questions from his or her complaint.
 23 *Id.* at 22.

24 A federal court may exercise removal under the “artful pleading” doctrine even if a federal
 25

26 2 District courts have original jurisdiction over cases that arise under the law of the United
 27 States. U.S. Const. art. III, § 2, cl.1.

1 question does not appear on the face of the complaint. *ARCO Environmental Remediation, L.L.C. v.*
2 *Dep't of Health and Environmental Quality of the State of Montana*, 213 F.3d 1108, 1114 (9th Cir.
3 2000). The artful pleading doctrine applies when: (1) federal law completely preempts state law; (2)
4 the claim is necessarily federal in character; or (3) the right to relief depends on the resolution of a
5 substantial, disputed federal question. *Id.* However, courts should “invoke the [artful pleading]
6 doctrine only in limited circumstances as it raises difficult issues of state and federal relationships
7 and often yields unsatisfactory results.” *Lippitt v. Raymond James Financial Services*, 340 F.3d
8 1033, 1041 (9th Cir. 2003). Additionally, the “mere presence of a federal issue in a state cause of
9 action does not automatically confer federal-question jurisdiction.” *Merrell Dow Pharmaceuticals*
10 *Inc. v. Thompson*, 478 U.S. 804, 813 (1986).

IV. DISCUSSION

12 Defendants argue that they complied with the federal procedures for removing the suit pursuant
13 to 28 U.S.C. §§ 1441-1446. Opposition, ECF No. 10 at 2. Although Wells Fargo’s motion asserts
14 that Defendants did not comply with the federal removal procedures, Wells Fargo’s motion appears
15 to be a form brief and addresses diversity jurisdiction, which is not at issue in this case. *See Motion*,
16 ECF No. 4-1 at 6 (discussing diversity jurisdiction). In its reply brief, Wells Fargo did not offer any
17 counter-argument regarding Defendants’ compliance with the requirements for removal. *Reply*,
18 ECF No. 11. Because Defendants allege a federal question and removed within thirty days of
19 receipt of the complaint, the court finds that Defendants complied with the federal procedures for
20 removal.

21 Defendants also argue that the underlying action is one “in Federal Ejectment, since there is no
22 unlawful detainer action available in State Court to evict the tenant of a foreclosed landlord.”
23 Opposition, ECF No. 10 at 2-3. Defendants argue that the Protecting Tenants at Foreclosure Act
24 (“PTFA”) preempts state law with regards to evicting bona fide tenants of foreclosed landlords. *Id.*
25 at 3. Defendants’s logic is that the PTFA creates a “federal ejectment” claim because it provides
26 greater protections to tenants of foreclosed landlords than does California law in the form of (1) 90-
27 day notice prior to eviction as opposed to the 60-day notice called for by California law and (2) the
28 90-day notice can only be given when the tenancy is month-to-month or if there is a buyer who will

1 use the premises as their primary residence. *Id.* Therefore, according to Defendants, “it is
2 impossible to evict a bona fide residential tenant of a foreclosed landlord in California under State
3 law” because the PTFA provides additional protections. *Id.*

4 Instead, Defendants argue, Wells Fargo’s action is merely an artfully pleaded federal claim. *Id.*
5 at 4. In support of this argument, Defendants state that the notice to vacate upon which the
6 complaint is based includes that it is a 90-day notice to bona fide tenants under the PTFA. *Id.*; see
7 Notice to Vacate, ECF No. 1 at 12. Defendants also assert that the “PTFA is that substantial federal
8 question.” Opposition, ECF No. 10 at 5. Defendants then argue that the PTFA protections are not a
9 defense but a necessary element to the cause of action. *Id.*

10 Wells Fargo argues that its complaint asserts only a cause of action for unlawful detainer
11 pursuant to section 1161(a)(b)(3) of the California Code of Civil Procedure. Motion, ECF No 4-1 at
12 3-4; Reply, ECF No. 11 at 2. Wells Fargo explains that the purchaser at a trustee’s sale is entitled to
13 immediate possession of the subject property. Reply, ECF No. 11 at 3 (citing *Farris v. Pacific*
14 *States Auxillary Com.*, 4 Cal.2d 103 (1935)). The purchaser then may bring an unlawful detainer
15 action against the trustor, or anyone holding under the trustor, who refuse to relinquish possession.
16 *Id.* (citing Cal. Code Civ. Proc. § 1161a; *MCA, Inc. v. Universal Diversified Enterprises Corp.*, 27
17 Cal. App. 3d 170 (1972)). The plaintiff in an unlawful detainer action is entitled to judgment upon
18 establishing that the subject property was sold in accordance with section 2924 of the California
19 Civil Code and that the requisite notice to quit was served on the defendant as described in section
20 1162 of the California Code of Civil Procedure. *Id.* (citing, amongst others, *Whens, Partian &*
21 *Cunningham v. Hollis*, 196 Cal. App. 3d 948, 952 (Cal. Ct. App. 1987)).

22 Wells Fargo also asserts that the PTFA “simply allows for certain individual to remain in the
23 premises for longer periods of time before they can be evicted” and that the notice provision is
24 just an anticipated defense to the state unlawful detainer action, presenting a question of fact for
25 the state court to decide *Id.* at 4.

26 The court agrees with Wells Fargo. Wells Fargo’s complaint states a single claim for unlawful
27 detainer under California law. An unlawful detainer action, on its face, does not arise under federal
28 law but is purely a creature of California law. See *Wescom Credit Union v. Dudley*, No. CV

1 10-8203 GAF (SSx), 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010) (rejecting a similar
 2 argument).

3 Second, Defendants mischaracterize the operation of the PTFA. The PTFA is a federal statute
 4 that provides certain protections to tenants who reside in properties subject to foreclosure. These
 5 protections include the right to continue living on the foreclosed property premises for the duration
 6 of their lease and the right to receive a 90-day notice to vacate. The PTFA states, in pertinent part:

7 (a) IN GENERAL.-In the case of any foreclosure on a federally-related mortgage
 8 loan or on any dwelling or residential real property after the date of enactment of
 9 this title, any immediate successor in interest in such property pursuant to the
 10 foreclosure shall assume such interest subject to-

11 (1) the provision, by such successor in interest of a notice to vacate to any
 12 bona fide tenant at least 90 days before the effective date of such notice; and

13 (2) the rights of any bona fide tenant, as of the date of such notice of
 14 foreclosure-

15 (A) under any bona fide lease entered into before the notice of foreclosure
 16 to occupy the premises until the end of the remaining term of the lease,
 17 except that a successor in interest may terminate a lease effective on the
 18 date of sale of the unit to a purchaser who will occupy the unit as a
 19 primary residence, subject to the receipt by the tenant of the 90 day notice
 20 under paragraph (1), or

21 (B) without a lease or with a lease terminable at will under state law,
 22 subject to the receipt by the tenant of the 90 day notice under subsection
 23 (1),

24 except that nothing under this section shall affect the requirements for termination
 25 of any Federal-or State-subsidized tenancy or of any State or local law that
 26 provides longer time periods or other additional protections for tenants.

27 Pub.L. No. 111-22, § 702, 123 Stat. 1660 (2009).

28 “Preemption gives rise to federal question jurisdiction only when an area of state law has been
 29 completely preempted by federal law.” *Perez v. Nidek Co. Ltd.*, 657 F.Supp.2d 1156, 1161 (S.D.
 30 Cal. 2009). Only the following three areas have been recognized as areas of complete preemption
 31 by the United States Supreme Court and circuit law: (1) claims under the Labor Management
 32 Relations Act; (2) claims under the Employment Retirement and Insurance Security Act; and (3)
 33 certain Indian land grant rights. *See Robinson v. Michigan Consol. Gas Co. Inc.*, 918 F.2d 579, 585
 34 (9th Cir. 1990). The court holds that the complete preemption doctrine is inapplicable in this case
 35 and does not warrant removal in the present action. *See BDA Investment Properties LLC v. Sosa*,

1 No. CV 11-03684 GAF (RZx), 2011 WL 1810634, at *2 (C.D. Cal. May 12, 2011).

2 The PTFA's provisions requiring that notice be given ninety days in advance and preventing
3 termination of a bona fide lease unless a purchaser will occupy the unit as a primary residence are
4 federal defenses to an unlawful detainer action where the plaintiff fails to comply with these
5 requirements. The 90-day notice requirement is not an element of the unlawful detainer action.
6 See Cal. Code Civ. Proc. § 1161a. Instead, it is a defense that may defeat an unlawful detainer
7 action. A federal defense, however, does not support federal-question jurisdiction. *Valles v. Ivy Hill*
8 *Corp.*, 410 F.3d 1071, 1075 (9th Cir.2005).

9 And the PTFA's provisions do not create a federal claim allowing for evictions, either explicitly
10 or implicitly. See *Wescom Credit Union*, 2010 WL 4916578, at *3. The district court in *Nativi v.*
11 *Deutsche Bank Nat. Trust Co.*, No. 09-06096 PVT, 2010 WL 2179885 (N.D. Cal. May 26, 2010),
12 analyzed the congressional record and text of the PTFA, concluding that no private right of
13 enforcement was implied. 2010 WL 2179885, at *3. Specifically, the *Nativi* court quoted Senator
14 Gillibrand's statement that the PTFA was intended "to give *local governments and States* the tools
15 they need to tackle this housing crisis." *Id.* (quoting 155 Cong. Rec. S5096-7 (daily ed. May 5,
16 2009) (statement of Sen. Gillibrand) (emphasis added)). Additionally, by its plain text, the PTFA is
17 focused on providing additional or supplemental protections to state or local laws. See Pub.L. No.
18 111-22, § 702, 123 Stat. 1660 (2009) ("[N]othing under this section shall affect the requirements for
19 termination of any Federal-or State-subsidized tenancy or of any State or local law that provides
20 longer time periods or other additional protections for tenants.").

21 Defendants' best argument is that the PTFA's provisions raise a federal question (i.e., did Wells
22 Fargo comply with the PTFA's requirements?). But, even assuming arguendo that there is a federal
23 question, there still is no federal jurisdiction because the PTFA's requirements are straightforward,
24 and the mere presence of a federal issue by itself does not confer federal-question jurisdiction.

25 *Merrell Dow*, 478 U.S. at 813.

26 ///

27 ///

28 ///

V. CONCLUSION

For the foregoing reasons, the court **GRANTS** Wells Fargo's motion to remand.

This disposes of ECF Nos. 4 and 5.

IT IS SO ORDERED.

Dated: June 2, 2011

WBC

LAUREL BEELER
United States Magistrate Judge